

The opinion in support of the decision being  
entered today is not binding precedent of the Board.

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Paper

Filed by: Trial Section Merits Panel  
Box Interference  
Washington, D.C. 20231  
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Filed  
28 April 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

KENNETH J. McCLELLAN

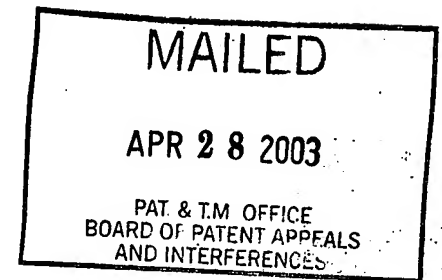
Junior Party,  
(Patent 6,323,489 B1),

v.

BRUCE CHAI and YANGYANG JI

Senior Party,  
(Application 09/506,160).

Patent Interference No. 105,083



Before TORCZON, MEDLEY and NAGUMO, Administrative Patent Judges.

MEDLEY, Administrative Patent Judge.

**JUDGMENT PURSUANT TO 37 CFR § 1.662**

Upon consideration of the McCLELLAN REQUEST FOR ENTRY OF ADVERSE  
JUDGMENT (37 CFR § 1.662) (Paper 18), in which party McClellan requests adverse judgment  
against McClellan, it is

**ORDERED** that judgment on priority as to Count 1 (Paper 1, page 5), the sole count in the interference, is awarded against junior party Kenneth J. McClellan.

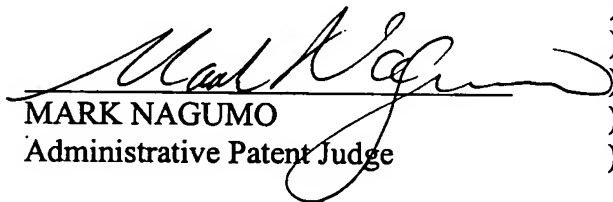
**FURTHER ORDERED** that junior party Kenneth J. McClellan is not entitled to a patent containing claims 1-10 (corresponding to Count 1) of U.S. patent 6,323,489.

**FURTHER ORDERED** that a copy of this paper shall be made of record in files of application 09/506,160 and U.S. Patent 6,323,489.

**FURTHER ORDERED** that if there is a settlement agreement, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.661.

  
RICHARD TORCZON  
Administrative Patent Judge

  
SALLY C. MEDLEY  
Administrative Patent Judge

  
MARK NAGUMO  
Administrative Patent Judge

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TO: INTERFERENCE PRACTICE SPECIALIST

*Edward J Glick*

FROM: Amalia Santiago, Chief Board Administrator

BOARD OF PATENT APPEALS AND INTERFERENCES

SUBJECT: INTERFERENCE NO. 105083

Handling of application/patented files involved in interferences by  
primary examiner.

1. This interference has been terminated as to all parties and all counts. A copy of the final decision on this interference has therefore been made part of the involved applications and patented files transmitted herewith. The interference files are concurrently being sent to the warehouse for storage (Franconia, LOCA 9200). Should the examiner need the interference file, it should be ordered from the warehouse.

2. Under 37 CFR 1.664, the examiner should promptly take such action in any application previously involved in an interference as may be necessary.

Before allowing a losing party's application, the examiner should carefully consider whether the grounds of estoppel have been fully applied. See MPEP § 2363.03. In order to promote uniform application of the doctrines of lost counts and estoppel, the examiner must consult the administrative patent judge who was in charge of the interference before allowing a losing party's application. The examiner can reach the administrative patent judge by placing a call to the Board at 303-9797.